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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

WYNN HOLDINGS, LLC, a Montana limited liability company,

Case No.: 2:17-cv-00127-RFB-NJK

Plaintiff,

vs.

ROLLS-ROYCE MOTOR CARS NA, LLC, a Delaware limited liability company; TOWBIN MOTOR CARS, LLC, a Nevada limited liability company;;

Defendants.

FIRST AMENDED COMPLAINT

Plaintiff Wynn Holdings, LLC (hereinafter "Plaintiff" or "WH LLC") by and through his attorneys of record, the law firm of Marquis Aurbach Coffing, alleges and complains as follows:

PARTIES

1. WYNN HOLDINGS, LLC ("WH LLC") is and was at all times relevant herein, a Montana limited liability company.

2. ROLLS-ROYCE MOTOR CARS NA, LLC ("Rolls-Royce") is and was at all times relevant herein, a Delaware limited liability company.

3. TOWBIN MOTOR CARS, LLC ("Towbin") is and was at all times relevant herein, a Nevada limited liability company.

JURISDICTION AND VENUE

1
2 4. WH LLC is a Montana limited liability company, and its members are each
3 citizens of California.

4 5. Rolls-Royce is a Delaware limited liability company, with its principal place of
5 business in New Jersey.

6 6. Towbin is a Nevada limited liability company, and its members are each citizens
7 of Nevada.

8 7. The amount in controversy exceeds \$75,000 because WH LLC paid \$168,270 for
9 the vehicle in dispute and is seeking a refund for that amount plus additional damages.

10 8. Accordingly, this Court has jurisdiction over this case pursuant to diversity
11 jurisdiction under 28 USC § 1332.

GENERAL ALLEGATIONS

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13
14 9. WH LLC owns a 2012 Rolls-Royce Ghost, Extended Wheel Base, VIN
15 SCA664L55CUX65734 (the "Vehicle").

16 10. Mehdi Khorasani ("Khorasani"), a Member of WH LLC, acting on behalf of WH
17 LLC, purchased the Vehicle from Towbin on or about June 6, 2015 for WH LLC, pursuant to a
18 written contract.

19 11. Khorasani was at all times relevant herein, acting in his capacity as a Member of
20 WH LLC and was acting as an agent of WH LLC.

21 12. The purchase price of the Vehicle was \$168,270.

22 13. WH LLC has possessed and used the Vehicle since its purchase.

23 14. Towbin is a certified Rolls-Royce dealer.

24 15. At all times relevant hereto, Towbin was acting as an agent or representative of
25 Rolls-Royce.

26 16. Towbin sold the Vehicle as a certified used Rolls-Royce.

1 17. The Rolls-Royce 4-year manufacturer's warranty was in effect when WH took
2 possession of the Vehicle and expired October 30, 2016.

3 18. WH LLC is a "Buyer" under NRS 597.600(1)(b), which defines a Buyer as "Any
4 person to whom the motor vehicle is transferred during the time a manufacturer's express
5 warranty applicable to the motor vehicle is in effect."

6 19. WH LLC is a "Buyer" under NRS 597.600(1)(c), which defines a Buyer as "Any
7 other person entitled by the terms of the warranty to enforce its obligations."

8 20. WH LLC properly cared for and maintained the Vehicle.

9 21. WH LLC's principal is a luxury car enthusiast, has owned Rolls-Royce vehicles
10 previously, and is diligent regarding maintenance and repair of vehicles, including this Vehicle.

11 22. WH LLC did not neglect the Vehicle.

12 23. WH LLC did not make any unauthorized modifications or alterations to the
13 Vehicle.

14 **VEHICLE SERVICE HISTORY**

15 24. Since the purchase of the Vehicle in June 2015, the Vehicle has spent
16 approximately **181** days in for service, and many of the issues persist.

17 25. Since the Vehicle was purchased in June 2015 through approximately August of
18 2016, it has been in for service with a certified Rolls-Royce repair facility approximately 10
19 times.

20 26. Although the Vehicle has been in for service for various issues, the most prevalent
21 and problematic issues include the engine and Vehicle shaking during acceleration and repeated
22 malfunctions of the driver side airbag system, both of which problems have never been
23 completely resolved, and still exist.

24 27. Nevada law presumes a reasonable number of attempts have been made to
25 conform the Vehicle to the warranty for two reasons: (1) the Vehicle was subject to repair 4 or
26 more times by a Rolls-Royce authorized dealer for the engine and Vehicle shaking upon
27 acceleration and the driver side airbag system malfunction, NRS 597.630(2)(a); and (2) the

1 Vehicle was out of service for a cumulative total of more than 30 days while the warranty was in
2 effect. In fact, the Vehicle was out of service for approximately 181 days from June 2015 to July
3 2016.

4 28. The malfunction of the driver's side airbag system rendered the car unsafe to
5 drive, according to Rolls-Royce, requiring a Rolls-Royce mechanic to several times pick up the
6 Vehicle and take it in for service.

7 29. Rolls-Royce would not allow WH LLC to drive the vehicle several times because
8 of the driver's side airbag malfunction.

9 30. WH LLC has lost confidence in the safety of the Vehicle due to the recurring and
10 persistent engine and Vehicle shaking and malfunction of the driver's side airbag system, as well
11 as the numerous other issues for which the Vehicle has been serviced.

12 31. During several service visits, Rolls-Royce road tested the Vehicle, adding a total
13 of approximately 405 miles to the Vehicle.

14 32. WH LLC is entitled to be compensated for this additional mileage that added
15 wear and tear to the Vehicle at no fault of WH LLC's.

16 **WH LLC'S REPEATED BUY-BACK REQUESTS**

17
18 33. Since approximately December 2015, WH LLC and its representatives have
19 continuously emailed and called Laura Vaughan, Executive Customer Care, Owner Relations
20 and Services, Rolls-Royce Motor Cars NA, LLC.

21 34. Ms. Vaughan provided no solutions or assistance.

22 35. WH LLC requested that Rolls-Royce buy back the vehicle via email on January
23 13, 2016.

24 36. On February 1, 2016, Ms. Vaughan responded, refusing to buy back the car and
25 offering a nominal settlement offer that was wholly inadequate.

26 37. Again, as the malfunctions continued, WH LLC requested that Rolls-Royce buy
27 back the Vehicle on or about June 8, 2016.

1 38. Approximately a month later, Ms. Vaughan responded and again Rolls-Royce
2 refused to buy back the Vehicle.

3 39. WH LLC then made a final written demand upon Rolls-Royce, dated October 4,
4 2016, to which Ms. Vaughan responded with the same nominal settlement offer made previously
5 that was insulting to WH LLC and demonstrated bad faith on the part of Rolls-Royce.

6 40. Rolls-Royce was notified in writing many times during the express warranty
7 period about the nonconformities of the Vehicle with the Rolls-Royce manufacturer's warranty.

8
9 **ROLLS-ROYCE AND TOWBIN REFUSE TO RELEASE SERVICE RECORDS TO**
10 **CONCEAL PRIOR CONCEALED DAMAGE**

11 41. During one of the many times the Vehicle was being serviced, WH LLC was
12 informed by Rolls-Royce Motor Cars Orange County that there was evidence of damage to the
13 Vehicle from a prior accident.

14 42. Neither Rolls-Royce nor Towbin disclosed the prior accident or damage upon the
15 sale of the Vehicle.

16 43. The Vehicle was purchased as a certified pre-owned Rolls-Royce from Towbin,
17 an authorized Rolls-Royce retailer.

18 44. Knowing that the Rolls-Royce certification process is exacting, WH LLC was
19 surprised and concerned to learn that the car may have been in an accident that was not
20 disclosed.

21 45. Accordingly, WH LLC requested the service records for the Vehicle from
22 Stephen Nelson at Towbin via email on or about February 22, 2016. Mr. Nelson refused to
23 supply the records.

24 46. WH LLC made multiple requests for service records from Towbin, and was
25 denied each time.

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FIRST CLAIM FOR RELIEF

(Violation of Nevada's Lemon Law NRS 597.600 *et seq.*)

47. Plaintiff repeats and realleges the paragraphs above as though fully stated herein.

48. WH LLC is a Buyer of the Vehicle entitled to enforce the Rolls-Royce 4-year manufacturer warranty.

49. The Vehicle does not comply with the Rolls-Royce 4-year manufacturer's warranty.

50. WH LLC reported the nonconformities to Rolls-Royce and Towbin in writing before the expiration of the warranty.

51. Rolls-Royce, its agents, and/or its authorized dealers and Towbin failed to repair the Vehicle to conform with the manufacturer's warranty.

52. The defects or conditions causing the nonconformity of the Vehicle, including but not limited to the repeated and persistent shaking of the engine and Vehicle upon acceleration and malfunction of the driver's side airbag substantially impair the use and value of the motor vehicle to WH LLC.

53. The defects or conditions causing the nonconformity of the Vehicle are not the result of abuse, neglect, or unauthorized modifications or alterations of the Vehicle.

54. Nevada law presumes a reasonable number of attempts have been made to conform the Vehicle to the warranty for two reasons: (1) the Vehicle was subject to repair 4 or more times by a Rolls-Royce authorized dealer for the engine and Vehicle shaking upon acceleration and the driver side airbag system malfunction, NRS 597.630(2)(a); and (2) the Vehicle was out of service for a cumulative total of more than 30 days while the warranty was in effect. In fact, the Vehicle was out of service for approximately 181 days from June 2015 to July 2016.

55. Defendants violated Nevada's Lemon Law, NRS 597.600 *et seq.*, by failing and refusing to accept return of the Vehicle from WH LLC and refund WH LLC the full purchase

1 price including all sales taxes, license fees, registration fees, and other similar governmental
2 charges, less a reasonable allowance for WH LLC's use of the Vehicle.

3 56. As a direct and proximate result of Defendants' actions, WH LLC has been
4 damaged in an amount in excess of \$75,000.

5 57. As a direct and proximate result of Defendants' actions, WH LLC has been forced
6 to retain an attorney to prosecute this action and is entitled to attorney fees and costs as special
7 damages.

8 **SECOND CLAIM FOR RELIEF**

9 **(Breach of Contract Against Rolls-Royce and Towbin)**

10 58. Plaintiff repeats and realleges the paragraphs above as though fully stated herein.

11 59. WH LLC into a valid and existing contract with Towbin, acting on its own behalf
12 and as the agent and representative of Rolls-Royce, for the sale and purchase of the Vehicle.

13 60. WH LLC performed under the contract.

14 61. Towbin and Rolls-Royce breached the contract by failing to provide a properly
15 certified pre-owned Rolls-Royce Vehicle, by failing to disclose the prior accident, and by
16 refusing to produce the service records regarding the prior accident when WH LLC so requested.

17 62. As a direct and proximate result of Defendants' actions, WH LLC has been
18 damaged in an amount in excess of \$75,000.

19 63. As a direct and proximate result of Defendants' actions, WH LLC has been forced
20 to retain an attorney to prosecute this action and is entitled to attorney fees and costs as special
21 damages.

22 **THIRD CLAIM FOR RELIEF**

23 **(Breach of the Implied Covenant of Good Faith and Fair Dealing Against Rolls-Royce and Towbin)**

24 64. Plaintiff repeats and realleges the paragraphs above as though fully stated herein.

25 65. WH LLC into a valid and existing contract with Towbin, acting on its own behalf
26 and as the agent and representative of Rolls-Royce, for the sale and purchase of the Vehicle.

27 66. Towbin and Rolls-Royce owed a duty of good faith and fair dealing to WH LLC.

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1 77. Rolls-Royce and Towbin breached express warranties in violation of NRS
2 104.2313 *et seq.* and other law.

3 78. The warranties were not modified by NRS 104.2316.

4 79. As a direct and proximate result of Defendants' actions, WH LLC has been
5 damaged in an amount in excess of \$75,000.

6 80. As a direct and proximate result of Defendants' actions, WH LLC has been forced
7 to retain an attorney to prosecute this action and is entitled to attorney fees and costs as special
8 damages.

9 **FIFTH CLAIM FOR RELIEF**

10 **(Violation of Nevada's Deceptive Trade Practices Act Against Rolls-Royce and Towbin)**

11 81. Plaintiff repeats and realleges the paragraphs above as though fully stated herein.

12 82. Rolls-Royce and Towbin engaged in a deceptive trade practice under NRS
13 598.0915 *et seq.* by representing the Vehicle was a certified pre-owned Rolls-Royce, by failing
14 to disclose a prior accident, and refusing to produce the service records regarding the prior
15 accident when WH LLC so requested.

16 83. Rolls-Royce and Towbin's actions constitute consumer fraud under NRS 41.600.

17 84. As a direct and proximate result of Defendants' actions, WH LLC has been
18 damaged in an amount in excess of \$75,000.

19 85. As a direct and proximate result of Defendants' actions, WH LLC has been forced
20 to retain an attorney to prosecute this action and is entitled to costs and reasonably attorney fees
21 under NRS 41.600.

22 **SIXTH CLAIM FOR RELIEF**

23 **(Violation of Magnuson-Moss Warranty Act 15 USC § 2301 *et seq.* Against Rolls-Royce
and Towbin)**

24 86. Plaintiff repeats and realleges the paragraphs above as though fully stated herein.

25 87. WH LLC is a consumer as defined by 15 USC § 2301 because it is the buyer of
26 the Vehicle, which is a consumer product and was transferred the Vehicle during the
27 manufacturer's warranty.

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1 88. Rolls-Royce and Towbin are suppliers as defined by 15 USC § 2301 because they
2 are engaged in the business of making the Vehicle, which is a consumer product, available to
3 consumers.

4 89. Rolls-Royce and Towbin are warrantors as defined by 15 USC § 2301 because
5 they gave or offered to give a written warranty or may be obligated under an implied warranty.

6 90. The Vehicle contains defects or malfunctions.

7 91. Rolls-Royce and Towbin made a reasonable number of attempts to correct the
8 defects or malfunctions and failed to do so, and the Vehicle still contains defects or
9 malfunctions.

10 92. WH LLC elects a refund and has demanded a refund from Rolls-Royce, but has
11 been unable to obtain a refund.

12 93. As a direct and proximate result of Defendants' actions, WH LLC has been
13 damaged in an amount in excess of \$75,000.

14 94. As a direct and proximate result of Defendants' actions, WH LLC has been forced
15 to retain an attorney to prosecute this action and is entitled to an award of reasonable attorney
16 fees and costs.

17 WHEREFORE, Plaintiff prays for the following relief against Defendants:

- 18 1. For damages in excess of \$75,000;
19 2. For an award of reasonable attorney fees and costs of suit; and
20 3. For any further relief as the Court deems to be just and proper.

21 Dated this 2nd day of March, 2017.

22 MARQUIS AURBACH COFFING

23
24 By /s/ Candice E. Renka
25 Phillip S. Aurbach, Esq.
26 Nevada Bar No. 1501
27 Candice E. Renka, Esq.
28 Nevada Bar No. 11447
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **FIRST AMENDED COMPLAINT** with the Clerk of the Court for the United States District Court by using the court's CM/ECF system on the 2nd day of March, 2017.

☒ I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Cally Hatfield

An employee of Marquis Aurbach Coffing

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